No. 33.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1967.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Petitioner,

vs.

ILLINOIS STATE BAR ASSOCIATION, an Illinois Not for Profit Corporation; CURTIS F. PRANGLEY, BERNARD H. BERTRAND, WILLIAM FECHTIG, KOREAN MOVSISIAN, HENRY W. PHILLIPS, WILLIAM C. NICOL, JOHN W. HALLOCK, WATTS C. JOHNSON and MARSHALL A. SUSLER, Individually and as Members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association,
Respondents.

On Writ of Certiorari to the Supreme Court of the State of Illinois.

BRIEF OF RESPONDENTS

Illinois State Bar Association and Its Individual Members of the Committee on Unauthorized Practice of Law.

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On Writ of Certiorari to the Supreme Court of the State of Illinois.

BRIEF OF RESPONDENTS

Illinois State Bar Association and Its Individual Members of the Committee on Unauthorized Practice of Law.

CONSTITUTIONAL, STATUTORY PROVISIONS AND CANONS OF ETHICS INVOLVED.

Pertinent constitutional provisions consisting of the First and Fourteenth Amendments to the Constitution of the United States; Canons of Ethics of the Illinois

State Bar Association; Illinois Workmen's Compensation Act, Illinois Revised Statutes (1959), Ch. 48, § 138.19 (1) (2), 138.19 (c), § 138.16, and 29 U. S. C. A., § 141, Labor Management Relations Act, are involved (Appendix A).

QUESTIONS PRESENTED.

The Respondents adopt Nos. 2, 3 and 4 of this section as stated by Petitioners, but object to portion of No. 1 insofar as it asserts that the attorney's salary was paid by the Union from membership dues. The record refutes that statement (R. 15). In sworn answers to interrogatories, the Union responded: "No portion of dues is allocated to pay attorneys' salary".

STATEMENT OF THE CASE.

The legal proceeding in this case began with the filing of a complaint in the Circuit Court of Sangamon County, Illinois, wherein, the Illinois State Bar Association, and members of its Unauthorized Practice of Law Committee, as plaintiffs, brought suit against the United Mine Workers of America, District 12, as defendants (R. 1-4). The pleadings alleged that the Illinois State Bar Association (hereinafter referred to as "Bar Association") is a not-for-profit corporation organized for the purpose of establishing and maintaining the honor and dignity of the courts and of the profession of law, the protection of the public, the fostering and promoting of a high standard of professional ethics, and the due administration of justice in all courts in the State. The United Mine Workers of America, District 12, is a labor union, and appeared in court in response to the complaint in the name of Joseph Shannon, a member of District 12, and all members of said association made parties by representation. The complaint charges the Union has been engaged in the practice of law in Illinois by employing an attorney on a salary basis for the purpose of representing its members with respect to their individual claims for compensation under the provisions of the Workmen's Compensation Act of the State of Illinois. The complaint further charged that the Union is not and cannot be licensed to practice law in the State of Illinois, and despite its lack of authority has offered, furnished and rendered legal services and advice. These activities are charged to be, among other things, contrary to public policy, and "not only tend to degrade the legal profession and to bring the same into bad repute in the administration of justice, but also tend to mislead and defraud the public." The Bar Association in conclusion sought an injunction restraining and enjoining the defendant, its agents or employees from:

1. Giving legal counsel and advice.

2. Rendering legal opinions.

3. Representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of the State of Illinois.

4. Practicing law in any form either directly or indirectly.

5. Advertising, advising or holding itself out to members or others as practicing law or as having a right to practice law.

6. Charging or collecting fees, commissions or payments or apportioning dues of members in any form for legal services.

Defendant, acting through Joseph Shannon, a member of District 12, United Mine Workers of America and all the members of the association made parties by representation, then moved the Court for an order directing the Bar Association to make the complaint more definite and certain as to the allegation that defendant, on occasion, filed claims with the Industrial Commission for and on behalf of a member without obtaining the member's permission, authorization or approval (R. 5). In response to an order entered on this motion the Bar Association pleaded that one Elery D. Morse, East Walnut Limits, Canton, Illinois, a UMW member was injured on July 18, 1961, in the course of his employment. In March, 1962, Morse retained the services of Claudon and Elson, attorneys, 21 W. Elm Street, Canton, Illinois, to file his application for adjustment of claim in regard to his claim against the Midland Electric Coal Corporation with the Industrial Commission of Illinois. On June 28, 1962, Claudon and Elson filed an application for adjustment of claim for Mr. Morse, Case No. 712,133, before the Industrial

Commission. One month later, on July 23, 1962, M. J. Hanagan, salaried attorney for United Mine Workers District 12, filed a similar application for Elery Morse, Case No. 713,647, without Morse's consent, approval, authorization, and without knowledge of the previous application having been filed (R. 6).

An answer by the Union was filed admitting the general allegations relating to the Bar Association and its individual members, and the existence of the Union. The Union denied it was engaged in the practice of law, but admitted the employment of an attorney on a salary basis for the sole purpose of representing the members in their individual claims before the Industrial Commission of the State of Illinois. The pleading denied filing without a member's permission, and as to the pleaded facts relating to Elery Morse, denied same, and stated further, that, even if true, such matter was immaterial to this case. It was further admitted that as an association it is not and cannot be licensed to practice law in Illinois. All other matters pleaded were likewise denied (R. 7-8).

The Union moved to strike the portions of the pleadings referring to the Elery Morse incident and for judgment on the pleadings (R. 8-10). This motion was denied by the trial court. The Union, one week later, filed a motion for reconsideration of the order denying motion for judgment on the pleadings stressing a violation of Section 19, of Article 2 of the Constitution of the State of Illinois and of the rights allegedly guaranteed the Miners by the First and Fourteenth Amendments of the Constitution of the United States. After hearing, this likewise was denied (R. 11).

Interrogatories were filed by the Bar Association and served upon the defendant's attorney (R. 55-62). Objections were made to the interrogatories and some were eliminated by order of court.

In the answers to plaintiffs' interrogatories, the officers of the Union were identified. It was disclosed that the Union had 8500 working members. It had offices in Springfield, Taylorville, DuQuoin and West Frankfort, Illinois. On legal aid, information was supplied naming an international special representative from Lewistown, a district special representative from Thompsonville, two secretaries (one in Springfield and one in West Frankfort) and the added information that local unions designate an officer or member to "assist other members in preparing and filing reports of accidents occurring in mines over which they have jurisdiction". The salaried attorney was identified as Stuart J. Traynor of Taylorville, Illinois, and it was stated that members by themselves or with assistance of someone in the local union prepare, sign and file for the attorney, either in Springfield or West Frankfort, a report of accident.

Attached to the answers and made a part thereof were three exhibits. Exhibit "A" was a Report to Attorney on Accident, Exhibit "B" was a letter from the union attorney to local Union officers and members, and Exhibit "C" was a letter from the president to the same people written four years later (Appendix B).

The Union admitted that the present attorney does not see and interview each injured member before starting a claim.

Stuart Traynor, up to date of answers to interrogatories, (January, 1964 to February 2, 1965) had filed 590 applications for adjustment of claims, had concluded 637 files, and had collected $737,998.27 for the injured miners or their families. William D. Hanagan, serving only an interim term, filed only 20 applications for adjustment of claim, settled 87, and collected $100,723.24. His father, M. J. Hanagan, who held the position of salaried attorney for many years, from January 1, 1961 until his death in

June of 1963, filed 1318 applications, concluded 1328 claims and collected $1,859,640.65.

The interrogatories, further disclosed, that M. J. Hanagan received a salary of $12,400 plus $2,236.54 expenses for a total of $14,436.54 in 1961; a total of $14,954.79 in 1962 and until his death in 1963, the sum of $7,044.16. William D. Hanagan received a salary of $3,099.96 and expenses of $323.05, for a total of $3,423.01. Stuart J. Traynor from January through November, 1964, earned a salary of $11,366.68 and received expenses of $1497.60 for a total of $12,864.28.

At a meeting of the Executive Board of the Union on August 5, 1963, a motion was made and passed unanimously authorizing the acting president, Joseph Shannon, to make arrangements with Stuart Traynor of Taylorville, Illinois for the purpose of retaining him "to handle District 12 compensation cases."

Dues of each member have been $5.25 per month since November 1, 1964, but no portion of the dues is allocated to pay attorneys salary.

In addition to interrogatories submitted to defendant, the deposition of Stuart J. Traynor was taken (R. 31-54). In answer to questions, he advised that he was employed by the United Mine Workers of America, District 12, since October 1963, with direction and authorization to represent members of District 12 in claims for Workmen's Compensation Benefits under the Illinois Workmen's Compensation Act. He disclosed his salary of $12,400 a year, that he is responsible and obligated to represent miners, no matter how many may have claims during any particular year, and his salary neither increases or decreases based on number of claims handled. The union never requires him, as part of his employment to do work outside the State of Illinois. He does not consider

himself hired to render legal advice on the running of District 12 or any of its internal affairs. His main function is to represent individual members when that person is hurt in a mining accident wherein he would qualify under the Workmen's Compensation Act of the State of Illinois. He maintains an office at Taylorville, for his services with the United Mine Workers, and the Union maintains office space at Springfield and West Frankfort. It is generally known among the members of the Union that they have a lawyer available to them for the purpose of presenting their claim before the Industrial Commission and this is true whether or not they know him personally. Because of his residence in Taylorville, a considerable distance from West Frankfort, he would not be one of the lawyers in the West Frankfort area with whom the members would be personally familiar. Most applications for adjustment of claim are signed outside of his presence. The miner can obtain the Report to Attorney form at the mine and need not go to either of the two offices, but sends it in. A secretary then fills out the application without the man being present and the attorney signs it. Traynor acknowledged that he could not find any language in the Report to Attorney that in any way instructs him to file a claim or hires him to do so as an individual. The application is sent in to the Industrial Commission, after a secretary signs the attorneys name on the form and at the time of this filing, in most instances, he has not seen the injured employee. The member secures all the medical reports for the attorney, either from the company doctor or from someone else, if the member is in need of further medical attention. In preparing for a hearing before an Arbitrator he does not send out advance notice for a conference with the injured miner before the hearing. Some drop in and see him ahead of time, but if they did not, the first time the attorney would see him would be the day of the hearing at place of the hearing. He confers

with the coal company lawyer and if they agreed as to the figure of settlement, a settlement contract is prepared and presented, otherwise they have a hearing before the Arbitrator for his decision. Although he has represented miners for private matters in his three county areas, he has never represented miners from the West Frankfort area for their private purposes. This individual representation has been more in the probate field than anything else.

He received his first contact from the Union in August, 1963 when he was told Mr. Shannon would like to talk to him. He was told it was necessary for the Union to hire an attorney to carry on the work of Mr. Hanagan. The next event was his receipt of a letter dated September 26, 1963, from Mr. Shannon advising him that he had been hired.

There was an error in the original answers to interrogatories which are corrected as follows:

14 (d) $737,998.27.

This change is due to fact that from October to December of 1963, he filed 174 applications for adjustment of claim in his name and closed 150 cases for a total recovery of $209,113.14.

Subsequently, the plaintiffs moved to strike paragraph 7 from their pleadings and the same was allowed.

After the pleadings were settled, the interrogatories answered and the deposition of Stuart Traynor accomplished, the United Mine Workers filed a motion for summary decree and, upon receipt thereof, the Illinois State Bar Association countered with their own motion for summary judgment. These motions were heard by the Honorable Creel Douglas, Chief Judge of the 7th Judicial Circuit, State of Illinois, and on September 7, 1965, he entered an

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order denying the relief sought by the United Mine Workers of America, District 12, and granted the motion of the Illinois State Bar Association, and thereby enjoined the United Mine Workers from doing any of the following acts

1. Giving legal counsel and advice.

2. Representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the laws and statutes of the State of Illinois.

3. Rendering legal opinions.

4. Employing attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois.

5. Practicing law in any form either directly or indirectly.

The Union took an appeal to the Illinois Supreme Court, whose decision affirmed the holding of the Circuit Court. It is from this Illinois Supreme Court opinion that the United Mine Workers, District 12, have sought a writ of certiorari in this court which was granted February 27, 1967.

SUMMARY OF ARGUMENT.

The Illinois Supreme Court has consistently held that not-for-profit organizations which hire lawyers to represent their members are engaging in the unauthorized practice of law. The question of representation of union members by preselected attorneys was not new to Illinois when the **Mineworkers** suit was instituted. In 1958, the Illinois Supreme Court in **In re Brotherhood of Railroad Trainmen**, 13 Ill. 2d 391, 150 N. E. 2d 163, condemned the financial payback by the attorney to the union out of fees collected, but recognized the right of the union to recommend to its members the advisability of obtaining legal advice before making a settlement, and giving the names of attorneys who, in its opinion, have the capacity to handle such claims successfully.

After this decision, the Committee on Unauthorized Practice of the State Bar, in meetings held with mineworkers' representatives, urged the union to desist from its salaried lawyer arrangement and to follow the guidelines of recommendation of legal counsel as spelled out in the **Illinois Brotherhood** case. They refused to change their programs and, after all reasonable efforts failed, the Illinois State Bar Association instituted the present litigation to enjoin such practice. Repeated efforts, throughout the proceedings, were made to urge the United Mine Workers Union to change to the recommendation system. They continued their refusal.

The type of representation, with the volume of claims involved, was not conducive to the best interests of the public. The record does not support their claim that the plan insured competent and loyal legal counsel for the individual miner.

The claim of prohibition of attorneys' fees in compensation cases in Illinois is not supported by the statutory

law of the State, but, on the contrary, specific provisions of the Workmen's Compensation Act not only permitted attorneys' fees, but provide that they shall be regulated by the Industrial Commission.

The general language of the part of the Labor Management Relations Act dealing with "other mutual aid or protection" does not carry with it the right to usurp the authority of the Illinois Court to regulate and control the practice of law. The Congressional declaration of purpose and policy, as contained in Section 141 of the Act, does not include the individual rights of the members of the union, unrelated to the common purpose.

Professional Ethics opinions of the American Bar Association support the position taken by Illinois in this factual situation.

The injunctive decree was proper in all of its terms and was necessary for the protection of the public, who in this case is the individual miner.

Finally, the decision of the Illinois Supreme Court does not deny the petitioner union any constitutionally protected right, nor does the State decision conflict with any decision of this Court. The protection of the public and the assurance of the proper attorney-client relationship is the sole and only purpose for the existence of a State unauthorized practice of law committee, and its action here was necessary to enforce State protected rights of the public.

There was a compelling State interest that required the action of the committee and, finally, the ruling of the Illinois Supreme Court. This was not some vague unidentifiable right that was being protected, but a substantial right of the State to control the practice of law within its border. There was no invasion of the indi-

vidual miner's right of freedom of expression and association. It was because of its profound duty to the public that Illinois concerned itself with (1) the preservation of the integrity of the attorney-client relationship, (2) determination that Federal constitutional provisions of free expression and association are not infringed by the court's control of professional conduct and the protection of the public, and (3) the prevention of substantial commercialization of the law profession. The Illinois Supreme Court is not attempting to regulate conduct involving the application of a Federal law, such as the Safety Appliance Act, the Federal Employer's Liability Act, or the practice before the United States Patent Office, but the Illinois decision merely limited its curtailment of the union's conduct to State protected rights only.

The decision of the lower court should be affirmed.

ARGUMENT.

I.

The Decision Below Is Clearly Correct.

It is basic to This Court's consideration of the Brief of Petitioner's, United Mine Workers of America, District 12, that it be advised of the long history of Illinois Supreme Court pronouncements as to what constitutes the unauthorized practice of law within the State of Illinois. This court has consistently held that organizations, including not-for-profit organizations, which hire lawyers to represent their members are engaging in the unauthorized practice of law. **People ex rel. Courtney v. Association of Real Estate Taxpayers of Illinois,** 354 Ill. 102, 187 N. E. 823; **People ex rel. Chicago Bar Association v. The Motorists Association of Illinois,** 354 Ill. 595, 188 N. E. 827; **People ex rel. Chicago Bar Association v. Chicago Motor Club,** 362 Ill. 50, 199 N. E. 1.

The **Chicago Motor Club** case sets forth the position of Illinois as to the activities of a service organization when it said on pages 56-57:

> "By way of exception to the findings of the commissioner, respondent claims there is no admission in the record that it solicited memberships for the purpose of performing legal services; that the corporation itself performed no legal services; but such as were in fact performed were by lawyers engaged by respondent for its members pursuant to authority received by it from them; that such legal services were paid for out of dues collected by respondent from its members as their representative and agent. It is further contended that respondent is not engaged in the practice of law within its ordinarily accepted sense, but that its legal functions are only a part

of its many-sided activities as a service organization whose members have a common interest. However beneficial its many other purposes and services seem to be to its members and to the public generally, we cannot condone the advertisements and solicitations of memberships by respondent and its admission that it was only acting as agent in rendering legal services for its members without abandoning the rules laid down in several recent cases governing such practices. While the case of **People v. Peoples Stock Yards Bank**, 344 Ill. 462, is distinguishable from the present case in many respects, yet the fundamental principle was there expressed 'a corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it' (emphasis ours). When the Chicago Motor Club offered legal services to its members with the statement, 'should you be arrested for an alleged violation of the Motor Vehicle law, you may call the legal department, and one of our attorneys will conduct your defense in court,' it was engaging in the business of hiring lawyers to practice law for its members. This we have repeatedly condemned in Illinois. (**People v. Peoples Stock Yards Bank**, supra; **People v. Motorists Ass'n**, 354 Ill. 595; **People v. Real Estate Taxpayers**, 354 id. 102.) Other jurisdictions have reached the same or similar conclusions in recent cases. (**Goodman v. Motorists Allliance**, 29 Ohio N. P. R. 31; **In re Morse**, 98 Vt. 85, 126 Atl. 550; **In re Opinion of the Justices**, 194 N. E. (Mass.) 313; **Rhode Island Bar Ass'n**, 179 Atl. (R. I.) 139 (decided May 9, 1935.) The fact that respondent was a corporation organized not for profit does not vary the rule. **People v. Real Estate Taxpayers**, supra.''

Legal services cannot be capitalized for the profit of laymen, corporate or otherwise, directly or indirectly, in this State. In practically every jurisdiction

where the issue has been raised it has been held that the public welfare demands that legal services should not be commercialized and that **no corporation, association or partnership of laymen can contract with its members to supply them with legal services, as if that service were a commodity which could be advertised, bought, sold and delivered** (emphasis ours).

The **Illinois Mineworkers** Opinion (R. 94-105) and the Appellee's brief filed in the Illinois Supreme Court (R. 63-94) fully develop the court-announced concept of unauthorized practice of law in Illinois by unincorporated associations. This problem is not new nor is it prospective with the Illinois Court or the organized bar of the State of Illinois. The Committee on Unauthorized Practice of the State Bar for many years has considered these problems, including the salaried lawyer arrangement of United Mine Workers, District 12, and has taken court action in stopping such practices (R. 77-83).

This question of representation of union members by elected attorneys was not new to the Illinois Supreme Court when the **mineworkers** suit was initiated. In 1958, the Illinois Supreme Court handed down its opinion in **In re Brotherhood of Railroad Trainmen**, 13 Ill. 2d 391, 150 N. E. 2d 163. While condemning the financial payback by the attorney to the union out of fees collected, that court readily recognized the right of the union to recommend to its members generally, and, to injured members or their survivors in particular, first: the advisability of obtaining legal advice before making a settlement; and second: the names of attorneys who, in its opinion, have the capacity to handle such claims successfully (13 Ill. 2d 391, 398).

Immediately following this pronouncement by our court, the Illinois State Bar Association Unauthorized Practice

of Law Committee, in meetings held with the mineworkers' representatives, urged that union to desist from its salaried lawyer arrangement and follow the guidelines of recommendation of legal counsel approved by the Illinois Court in its **Brotherhood** case. In 1964, after all reasonable efforts failed, the Bar Association, acting through its committee, initiated the present litigation. Throughout the course of the litigation, at every appearance before the judges of the Circuit Court of Sangamon County, and, even before the Supreme Court, in our brief (R. 72-3, 92) as well as in oral argument, this Bar Association, through its counsel, offered to dismiss the suit if the salaried lawyer arrangements were abandoned and a proper recommendation plan substituted. This the union was unwilling to do.

The State Bar is interested in seeing that union members obtain "competent and loyal legal counsel" (R. 72-3), but we are not convinced that the plan now in effect accomplishes such purpose. On the contrary, the record herein belies such claim. It is axiomatic that not all claims or suits brought before administrative tribunals or courts are correctly decided at the lowest level. For this reason, appellate procedures are an inherent part of our judicial system. The rulings of the Industrial Commission are subject to review in the Circuit Courts of this State, and, from there, to our Supreme Court (Ill. Rev. Stat. 1959, Ch. 48, Sec. 138.19 (1) (2)). The fundamental duty of an attorney involves undiluted loyalty to the client whom he serves and whose interest he protects (**Illinois State Bar Association v. United Mine Workers, District 12**, 35 Ill, 20, 112, 219 N. E. 2d 503 (1966)). It follows, without question, that this duty extends to the maximum representation of his individual client's interest. An analysis of the Workmen's Compensation cases which reached the Supreme Court of the State of Illinois for a thirty-one year period (1936-1967) contained in volumes published

by the official Reporter, discloses that 351 compensation cases were decided. Of this total, 252 thereof were appeals initiated by employers, 99 were pursued by employees. In that number only 11 cases were appealed by the coal mining companies and 10 by the miner. Of this group of 21 cases, only 5 originated involving United Mine Workers, District 12.[1] Four of those appeals were filed by the coal mining companies and only one by a miner affiliated with the Petitioners herein. It is further significant that the last appeal by the mineworker was in 1942. During the above referred to thirty-one year period, the rates of recovery for specific injury were increased several times by statute, the last time being in 1963, before this litigation commenced. Yet, the salaried lawyer, in the calendar year 1964, recovered less on the average than his predecessor, even though he was practicing before the Commission when the rates were at a higher level (R. 53-4, 58-60). In the years 1964-66, during the pendency of this litigation, we find there was a substantial increase of appeals to the Supreme Court originating from this Administrative Agency due to the adoption of Illinois' new Judicial Article on January 1, 1964, which made appellate procedures more simplified and expeditious. Ninety-nine (99) compensation cases were taken by appeal to that court, of which seventy-nine (79) were advanced by the employer and twenty (20) by the employee. Not a single case involving a United Mine Workers, District 12 member, either as petitioner or respondent, reached our highest court in that period. Is this evidence of "competent and loyal legal counsel" so vital to the individual interest of the miner? We cannot believe that this salaried law-

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[1] **Beckemeyer Coal Co. v. Ind. Comm.**, 370 Ill. 113 (1938); **John Florczak v. Ind. Comm.**, 381 Ill. 117 (1942); **Franklin County Coal Co. v. Ind. Comm.**, 398 Ill. 528 (1948); **Chicago, Wilmington & Franklin Coal Co. v. Ind. Comm.** (Sarafin), 399 Ill. 76 (1948); **Chicago, Wilmington & Franklin Coal Co. v. Ind. Comm.** (Matchek), 400 Ill. 60 (1948).

yer arrangement has fully advanced legitimate legal claims of the mineworker. On the contrary, when considered with the volume of cases handled by this salaried attorney per year (R. 54) we cannot help but feel that, in the interest of expediting his work load, he most likely has dealt with the coal mining company's lawyers on a volume basis (sometimes called "wholesaling files"), and it would seem a logical conclusion that the individual mineworker's injury claim has been compromised at a figure far below what might have been secured if the mining company lawyer was dealing with independent attorneys. He becomes no better than the personal injury lawyer-broker who deals in volume with the insurance company and trades cases as a package deal, rather than by considering the injury aspect of each individual file.[2]

In Illinois, many attorneys are highly competent and successful practitioners before the Industrial Commission of the State of Illinois. There is absolutely no shortage of lawyers who are willing, ready and able to handle Workmen's Compensation cases of the union members. (The section on Workmen's Compensation of the Illinois State Bar Association has enrolled **969** officers and members.)[3] It is highly significant that nowhere in this record is there

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[2] Carlin, **Ethics and The Legal Profession** (1965); Carlin and Howard, **Legal Representation and Class Justice**, 12 U. C. L. A. L. Rev. 381, 386.

[3] Records of the Illinois State Bar Association reveal that of these 969 members who by their membership in the Section show their interest in compensation matters, 400 practice in Chicago, 85 in Cook County, exclusive of Chicago. The three counties surrounding Cook—62; the next eight counties away from Cook —68; next six counties—47; the next fifteen—83; the next sixteen counties—77; the next 14—45; the next 30, comprising Southern Illinois below Route 40—46; and the popular seven counties adjacent to St. Louis, Missouri—56. It is not intended that this list number only those attorneys who can competently handle a workmen's compensation claim, but it is indicative of the large percentage of the lawyers practicing in Illinois who are available.

a word of testimony, nor a single affidavit filed by the petitioners that any member of the union, for any reason whatsoever, was unable to find competent, individual attorneys to handle their claims. If such fact were true, most certainly the petitioners would have filled the trial court record with proof thereof, by depositions, or affidavits to this effect, before asking for a summary decree. Only if such circumstances existed in Illinois, could our factual situation be considered to parallel the **Button** (371 U. S. 415) case. Without it, their hue and cry of precedence vanishes.

A. An attorney may charge a fee for services rendered in handling Workmen's Compensation Act cases.

The Petitioner, in its brief, would have this court believe that a principal objective of the Workmen's Compensation Act was to assure that no one take anything out of an award except the injured person or his dependents, if he was deceased (Pet. brief 36-7). Reliance for this statement is upon a section of the Statute which prohibits an award to be assignable or subject to any lien, attachment, or garnishment. The meaning attached to this section is extended by Petitioner to exclude an attorney charging a fee for services rendered in a compensation case. The cases relied on, however, all refer to depleting the payments of an award because of a lien or charge from another source. In quoting from **Lasley v. Tazewell Coal Co.**, 223 Ill. App. 462, a 1921 decision, it is significant to note that the Appellate Court found against an attorney asserting a lien against the coal company for his fee after obtaining an award from the Industrial Commission. This is apparent by the following language from the opinion:

"There is nothing in the other sections of the Act which in any way conflicts with the provision referred to," that the Appellate Court did not review the entire Act. The Workmen's Compensation Act has and does provide for

the awarding of attorneys fees (Ill. Rev. Stat. 1965, Ch. 48, Sec. 138.16).

The section as to liens referred to by Petitioner was included in the original Act of 1912, and, it is conceded that the section on Rules did not contain any reference to attorneys fees until June 28, 1915, when the following was added:

> "The Board shall have the power to determine the reasonableness and fix the amount or any fee or compensation charged by any person, for any service performed in connection with this Act, or for which payment is to be made under this Act, or rendered in securing any right under this Act. Hurd, Ill. Rev. Stat., Ch. 48, Sec. 141 (1915). The words 'including attorneys, physicians, surgeons and hospitals' were added in 1925 immediately following the phrase 'or compensation charged by any person.'"

As both sections were part of the Workmen's Compensation Act in 1921, and, still appear in that Act, the Appellate Court, in **Lasley** were either uninformed or, by nature of these provisions, merely limited its decision to a prohibition of enforcing an attorneys lien against the employer. All attorneys fees are fixed by the Industrial Commission and are carefully and judiciously controlled.[4] It is common knowledge that the maximum fee allowed is 20%. However, rarely does the Commission approve fees of that size and most fees awarded are substantially

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[4] **People ex rel. Chicago Bar Assn. v. Lally**, 313 Ill. 21, 144 N. E. 329 (1924):

> "The administration of the Workmen's Compensation Act is put in the hands of the Industrial Commission. It fixes the amount of compensation to be paid and the amount of attorneys' fees or compensation rendered for any service under the Act. Beneficiaries of the Act are under the protection of the Commission, and they can waive none of the provisions of the Act in regard to compensation."

less. It should also be mentioned that the maximum fee approved in a death case is 10%.

The law recognized that attorneys fees would and could be charged and are subject to the review of the Commission, when it in Section 19 (c) of the Act, in part, stated:

> "The fees and payment thereof of all attorneys and physicians for services authorized by the Commission under this Act, shall, upon request of either the employer or the employee or the beneficiary affected, be subject to the review and decision of the Commission." Ch. 48, Sec. 138.19 (c).

The Petitioners claim that the **mineworkers** opinion in this instant case conflicts with public policy as expressed by the Legislature is an exercise in fallacious reasoning. It is self evident that the section on liens, attachments and garnishments cannot be read to contain a prohibition of attorneys fees for professional services.

B. The Labor-Management Relations Act does not authorize or have within its purview the union salaried lawyer arrangement considered by the Illinois Supreme Court.

The mineworkers, throughout the entire course of this litigation, have endeavored to place unwarranted significance upon very general language contained in Section 157 of the Labor Management Relations Act (29 U.S. C. A., 141-157). The section relied upon, after stating the right of employees to organize and to collectively bargain contains what petitioner believes to be an all inclusive catch-all phrase:

> "and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection..."

To this language the union claims authority for it "to make wise provision in advance for competent and loyal

legal assistance" in the event of disabling injury or death arising out of and in the course of member's employment. This assumes that because coal mining is hazardous, its members need free legal service and that its appointment of one man to handle all its members claims insures competent and loyal legal assistance.[5] The facts and the records of the Department of Mines & Minerals of the State of Illinois refute each claim.[6]

It is common practice among attorneys handling claims before the Industrial Commission not to accept as final

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[5] "We find nothing to suggest that Congress intended by the Railway Labor Act, any more than by the Labor Management Relations Act (29 U. S. C. A. 141), to overthrow State regulation of the legal profession and the unauthorized practice of law." **In re Brotherhood of Railroad Trainmen**, 13 Ill. 2d 391, 395.

29 U. S. C. A., § 141, specifically sets forth the purposes and policy of the Labor-Management Relations Act. None of the provisions thereof encompass the right to furnish a salaried lawyer to handle individual claims of the members.

[6] The Director of Mines and Minerals of the Department of Mines and Minerals of the State of Illinois stated in the Illinois Blue Book, 1963-1964, that the mineral industry in Illinois, of which the chief mineral mined is coal, exceeds a gross dollar revenue of $600,000,000 per year. Illinois continued as fourth-ranking coal producing state in the nation, producing more than 11 per cent of all coal. Its value in 1962 was $186.6 million. In 1965, coal produced had a value of $218,977,345.00 (Illinois Blue Book, 1965-1966). The State of Illinois is endowed with the largest known coal reserves in the nation. It is estimated that 137 billion tons of coal remain in the ground in seams of minable thickness, which at the present rate would take over 1000 years to exhaust (Illinois Blue Book, 1965-1966). The 1966 Annual Coal, Oil and Gas Report of the Department of Mines and Minerals, page 16, Table 2, "General Statement with Comparative Figures, 1962-66", although showing a decline in the number of mines operating (from 116 to 84), shows a 15 million ton increase in coal output, an increase in the number of miners working from 8774 to 8994, and an increase in average days worked from 182 to 200 days. Still another statistical chart, "Labor and Employment—Table 17", reflects upon petitioner's claims. In this chart, it compares fatal and non-fatal accidents for 38 years. Since 1962, the report shows an average per year of 430 to 485 fatal and non-fatal accidents.

and unimpeachable the medical reports of the company doctor. Each injured employee is submitted for physical examination and possible treatment to a specialist who is called upon to give a report as to his condition, often bases on percentages to aid the Arbitrator on making an award within the purview of the Statute. By this method, the lawyer is assured that the employee will present to the Commission the opinions of others than company doctors, and advances the rights and, by its very nature, increase the amount that is to be awarded. This is not the customary practice of the salaried union counsel. This is a rarity rather than the ordinary course of procedure (R. 42).

Because of the volume of claims that this one attorney must handle (430-485 per year), it is obvious that a thorough and conscientious handling would consume all of his time, and in all probability if studied and presented on an individual basis, instead of a mass production technique, would probably reduce substantially the number of claims concluded each year. This volume needs the undivided attention of the single attorney, yet, we find Stuart Traynor was a State Senator and had a private practice other than the mineworkers' representation. (R. 31, 41). It is well known that a Senator must spend a minimum of three days, usually Tuesday, Wednesday and Thursday, in the State Capitol representing his constituents during a legislative session. These sessions last from 7 to 8 months beginning in January. Illinois Blue Book 1963-64, 1964-5, 1965-6. This leaves but 5 months, including part of the summer, to handle the volume previously mentioned. His salary per annum as a legislator is Nine Thousand ($9,000.00) Dollars, almost equal to his pay from the Union.[7] The Industrial Commission sends arbitrators to various locations throughout the State on a

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[7] Ill. Rev. Stat. 1963, Ch. 63, § 14.

regular basis to hear the cases.[8] Many of these locations are in the center of coal mining areas and are removed from Springfield, the State Capitol, by several hundred miles (R. 43-45). Thus, the mineworkers' attorney cannot do justice to his mineworker representation if he is to adequately represent his constituents. By the same token, he cannot do justice to his Senatorial position, if he spends more of his time representing the mineworkers. Look at the practicalities of the dilemma of Mr. Traynor. Because the Legislature meets every other year, he must subvert the interest of the mineworker for at least 7 months of that period in order to perform his public functions. This is not evidence of "competent and loyal legal assistance".

The Supreme Court of Illinois, having pride in its continuing efforts to protect the public and to regulate the legal profession, was forced by the factual situation presented to it in the **mineworkers** case to reach its announced conclusion. To have done otherwise would have avoided the duty it has as the highest judicial body in the State and its obligation to protect the public. We have repeatedly stated that the individual miner is the public in the eyes of the Illinois Supreme Court, and he does not lose that identity merely because he is a member of a union.

C. Petitioners' arguments run contra to facts as well as opinions of committees on professional ethics. Its analogies are wanting in support.

The Union's explanation that a legal department had to be started because the "interests of the members were being juggled and, even when not, they were required to pay forty or fifty per cent of the amounts recovered in damage suits, for attorneys" (R. 14). This cry arose within one year after the creation of the Industrial Com-

[8] Ill. Rev. Stat. 1963, Ch. 48, § 138.19.

mission and before it had a chance to operate. Strangely enough, they refer to "**damage suits**"—not injury or compensation cases. Did the Union have in mind the establishment of a legal department to handle personal injury matters unrelated to compensation? Was this proclamation in 1913 an advertising gimmick to lure members away from the rival Progressive Miners Union—a devise to build up its membership? If the Union was so concerned with the alleged gauging of its members by attorneys why did it not seek relief through the legislature or the Industrial Commission? We find that on June 29, 1915, the Legislature amended the Statute as follows:

> "The board shall have the power to determine the reasonableness and fix the amount of any fee or compensation charged by any person for any services performed in connection with this Act, or for which payment is to be made under this Act, or rendered in securing any right under this Act." Hurd, Ill. Rev. Stat. 1915, Sec. 153.

We are unable to find any legislative notes as to the reason for this amendment or what group promoted it. However, its purpose is obvious and meets the objection of the mineworkers as expressed to their membership, if their concern was, truthfully, compensation claims. Yet, they chose not to eliminate their salaried lawyer arrangement and permitted it to continue under circumstances which disclosed that the individual miner was not receiving adequate legal representation.

Petitioner chose to claim that the Illinois decision runs contra to an informal opinion of the American Bar Association's Committee on Professional Ethics, and, quotes the concluding paragraph of No. 469 as authority for their assertion that the mineworkers plan has the approval of that committee. Petitioner does not inform this court of the full opinion (Appendix C) which emphatically reas-

serts previous opinions that "where a lawyer is selected and employed, as well as paid, by the employer or association to represent its employees or members, the employment may well be unethical." Petitioner, further, refers to a portion of a letter to the appointed counsel (R. 19-20) which tells him to turn over a file if the member is represented by other counsel. It is interesting to note that the format used to obtain information in no way gives the member the opportunity to disclose he has other counsel. The **Report to Attorney on Accident** form (R. 16-17) does not contain any words of employment of the Union Lawyer to consent for him to proceed. It is arbitrarily assumed that the salaried union lawyer will represent him. What is there in these forms which would lead the salaried lawyer to believe or not to believe that the individual miner wants or even has secured other counsel? The circumstance of the Elery Morse incident eminently demonstrates this void (R. 9). It would seem, therefore, that this right to choose counsel is an empty one.

We also find a purported analogy between the lawyer hired by the insurance company to defend an insured in an automobile accident case with the mineworkers salaried lawyer arrangement. It is emphasized that in approving the relationship, a committee on Professional Ethics of the ABA stated that "the company and the insured are virtually one in their common interest and that the same may be said of the Union and its injured employee-members." A reading of Formal Opinion 282 (Appendix D), shows that such equating is not correct. The context of the remark by the committee has reference to a community of interest growing out of the contract of insurance with respect to an action brought by a third party against the insured within the policy provisions of defense, investigation and other contractual elements of control agreed upon between the parties (not the least of which is that it is the insurance company's money

that is involved). The Committee found that the lawyer hired by the insurance company can neither be said to be "exploited" by it in violation of Canon 35, nor that the lawyer was "lending his services to the unauthorized practice of law" under Canon 47. It further held that no profit inured to the company through the lawyers' employment and such employment was a necessary incident to the main contract of insurance. No part of Formal Opinion 282 can be stated to support the mineworker's plan which is under attack here. On the contrary, the record shows, among other things, that the mineworkers salaried lawyer is and can be "exploited" to the detriment of the individual miner and, as such, is lending his services to the "unauthorized practice of law" by a lay intermediary. When considering the type of services rendered and the volume involved, no other conclusion can be reached but that the individual miner is exploited to benefit the union in its claim of better representation as between it and rival coalminers' unions. We have previously shown that the members of the union are not impoverished or without access to competent legal advice and counsel.

D. **The injunctive decree was proper and complete for the purposes intended.**

Petitioners object to the scope of the injunctive decree as being too broad and not supported by the record. Petitioner's brief incorrectly paraphrases Items 3 and 4 of said decree. The decree has for its purpose stopping the United Mine Workers Union from representing its members in their individual claims through an attorney, the hiring of such an attorney for that purpose, and the necessary incidence to that arrangement. It may seem somewhat enlarged to enjoin the Union from the (1) giving of legal counsel and advice, and (2) rendering of legal opinions, but such facets of the decree are part of

the prohibition of the Union "practicing law in any form either directly or indirectly." Perhaps each of the first two elements should have been included as a subparagraph of No. 5. However, from a review of the facts and the evil sought to be controlled, the decree, in its present form, is understandable and correct. Certainly, from the facts of this case, items 3 and 4 must be upheld. The Illinois Supreme Court recognized the problem presented to it, and accepted its responsibility in controlling the legal profession and protecting the public. If it had decided that the injunctive decree was too broad in scope, it would have stricken that part which did not fall within the purview of its decision. It did not choose to do so. Therefore, This Supreme Court should not render a decision on that ground only, and reverse the considered decision of the Illinois Court.

Petitioner cites the case of **State of Wyoming v. State of Colorado**, 286 U. S. 494, as authority for the proposition that an injunctive decree cannot be broader or more extensive than the case warrants. The cited case does not so hold, but the Supreme Court has held that when a party brings a judgment or decree to it for review, on that party rests the burden of showing in what respect the decree is erroneous. **Federal Trade Commission v. Beech Nut Co.**, 257 U. S. 441. The United Mine Workers has failed to sustain the burden placed upon them and have merely indulged in categorical statements of denial. This very court has acknowledged that "it is a salutary principle that when one has been found to have committed acts in violation of a law, he may be restrained from committing other related acts". **NLRB v. Express Publishing Company**, 312 U. S. 42. "Giving legal counsel and advice" and "rendering legal opinions" are sufficiently related to the main subject of unauthorized practice as being a proper element of the decree that was entered in this cause.

If the Court, after approving, in general, the position taken by the Illinois Supreme Court, is inclined to limit the decree, it has the power to strike from any decree restraints upon the commission of unlawful acts which are disassociated from those which a defendant has committed. **Swift & Company v. U. S.**, 196 U. S. 375; **New York, New Haven and Hartford Ry. Co. v. Interstate Commerce Commission**, 200 U. S. 361. By this authority, the decision could be limited to approving only such portion as the Court believes is warranted by the action taken. As a result, the decree could be limited to enjoining the United Mine Workers, District 12, from:

a) Representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the laws and statutes of the State of Illinois, and

b) Employing attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois.

II.

The Illinois Supreme Court Decision Does Not Deny the Petitioner Any Constitutionally Protected Right Nor Does the State Decision Conflict With Any Decision of This Court.

When we filed the present suit against the mineworkers in June of 1964, your court had already handed down the decision in **Button** (371 U. S. 417, Jan. 14, 1963), and **Virginia Brotherhood** (377 U. S. 1, April 20, 1964). As lawyers, and above all, as members of the Unauthorized Practice of Law Committee, it behooved us to give careful consideration to the intent and meaning of these decisions because of their possible effect on matters pending

before us. A searching analysis of these cases, while comparing them with the factual situation involving the mineworkers in Illinois, and its purely **intrastate** character, convinced us, as attorneys, that our present litigation was in no way comparable to these decided matters. On the contrary, upon reviewing these two opinions with our own **Illinois Brotherhood** case, the Bar Association's course of action was considered proper and was warranted. As attorneys, it would be fool-hardy and presumptuous on our part to arbitrarily disregard the pronouncement of the highest court of the land for the sole and only purpose of harassing a union. It cannot be considered harassment, when you plead with them to adopt a course of conduct approved by the highest court in the land in **Virginia Brotherhood** (377 U. S. 1, at p. 8) (R. 92, 104).

The prime concern of the Bar Association and its Unauthorized Practice of Law Committee is the protection of the public. In this instance, the public is the individual mineworker, and he does not lose that status merely because he is a member of a large union. The protection of the public and the assurance of the proper attorney-client relationship is the sole and only purpose for the existence of a state Unauthorized Practice of Law Committee.

Our Illinois Supreme Court carefully considered the effect and the meaning of the pronouncements in **Button** (371 U. S. 415), and **Virginia Brotherhood** (377 U. S. 1), as it might be applicable to the mineworkers. The Court stated:

> "In **Virginia Brotherhood Trainmen** the Court held that the First and Fourteenth Amendments protect the rights of the members through their Brotherhood to maintain and carry out their plan for advising workers who are injured to obtain legal advice and for recommending specific lawyers. Since the part of the decree to which the Brotherhood objects infringes those rights, it cannot stand; and to the extent any

other part of the decree forbids these activities it too must fall." 377 U. S. at p. 8.

"The Court there (377 U. S. 5, n. 9) specifically pointed out that the railroad trainmen were objecting to only those portions of the decree encomposed by the language of the holding, as the Brotherhood had denied that it was engaging in practices forbidden by our decree in **In Re Brotherhood of Railroad Trainmen,** 13 Ill. 2d 391. Accordingly, that holding does not purport to overturn our decision precluding any financial connection between the Brotherhood and the counsel selected by it to handle individual membership claims. As a consequence, we do not read **Virginia Brotherhood Trainmen** as constitutionally protecting the conduct we are concerned with here, i. e., employment on a salary basis by a labor union of counsel to represent individual members' claims before the Industrial Commission. The Circuit Court decree in question here does not attempt to restrain the union from advising its members to seek legal advice or from recommending particular attorneys thought competent to handle Workmen's Compensation claims. As related earlier, our decision in **In re Brotherhood of Railroad Trainmen,** specifically allows such conduct."

"In **N. A. A. C. P. v. Button,** the Supreme Court of the United States held that a system devised by the N. A. A. C. P. to furnish and recommend attorneys (who were apparently compensated on a *per diem* basis by the organization in connection with each case handled) to member litigants for the prosecution of civil rights cases was constitutionally protected by the First and Fourteenth Amendments. However, the litigation therein engaged was regarded as a form of constitutionally protected political expression and cannot as such be equated with the bodily injury litigation with which we are concerned here. Also, it is

to be noted that an apparent dearth of Virginia lawyers willing to handle civil rights litigation was deemed of some importance by the Supreme Court, and at least Justice Douglas was influenced by his conclusion that the State's attempt to characterize the N. A. A. C. P. activities as 'solicitation' indicated a legislative purpose to penalize that group because of desegregation activities. Further, the majority opinion there read the decree of the Virginia Supreme Court of Appeals 'as prescribing any arrangement by which prospective litigants are advised to seek the assistance of particular attorneys' (371 U. S. at p. 433). Under such construction, the decree was deemed violative of the First and Fourteenth Amendment freedoms of speech and expression."

Comparing the **Button** facts with the mineworkers, the Illinois Court rightfully held that Illinois was not attempting to prohibit the union from advising its members to seek the assistance of particular attorneys, and pointed out that the Bar Association conceded that the mineworkers "may validly advise their members to seek legal advice in connection with their claims and may properly recommend particular attorneys deemed competent to handle such litigation" (R. 104).

The Illinois Court correctly concluded that the decision entered by the Circuit Court of Sangamon County was not violative of the First Amendment guarantees relating to freedom of association and expression. This State Court decision referred to the recognition in both **Button** (371 U. S. 438-40) and **Virginia Brotherhood** (377 U. S. 8, 10) cases, of the right of individual states to regulate the practice of law and those who unauthorizingly practice it (R. 104-5).

We find in **Button** that the facts disclosed no compelling state interest to justify Virginia's action. To the same

effect is this Court's opinion in the **Virginia Brotherhood Trainman** case (377 U. S. 8). Each decision, then, justified its application of First Amendment protection in reaching results announced. Illinois is not ignoring its recognition of the rights so vividly protected in **Button** and **Virginia Brotherhood Trainmen**; specifically the right of political expression or the right to advise and recommend particular attorneys because of their competence in a particular legal field. On the contrary, Illinois urges those rights and encourages their proper use for the benefit of the Union member in his individual affairs. What Illinois is concerned about, and in which it has a compelling state interest, is the protection of the public in connection with the practice of law by members of the profession admitted in its state acting through a lay intermediary. The maintenance of high professional standards among those who practice law, the prohibitions of acts of champerty, barratry and maintenance, the adherence to well-founded Canons of Ethics against solicitations and intervention by lay intermediaries, as well as statutory provisions forbidding the unauthorized practice of law are all factors involving clear and compelling state interests and have continually received the attention of Illinois Courts. Illinois, through the efforts of its Bar Association has repeatedly caused its Supreme Court to look into arrangements which challenge this protection of the public, and, as an incident thereto, the profession. We have referred earlier to the history of this court in that regard. The Illinois Supreme Court is not blind to progress or sociological development, as evidenced by its ruling in the **Illinois Brotherhood** case. You do not find it striking down the basic plan fostered by the Brotherhood. It only restricted its evil. That evil was the financial connection between the Brotherhood and the attorneys, and the concern of interference with the individual attorney-client relationship. It has done no more in its mineworker decision. It attacks the salaried

lawyer relationship for the evil it exposes, and it attempts to assure to the individual member of the union the undivided loyalty of his attorney. Neither the Court nor the Bar Association has put arbitrary road blocks in the path of the union. They merely direct that its **Illinois Brotherhood** and the **Virginia Brotherhood Trainmen** decisions be followed by eliminating that financial connection between union and attorney, and substituting the practice of selecting a list of qualified and competent attorneys to recommend to the members for that member to hire, and for that member to pay for services rendered.

In considering whether Illinois has a "compelling state interest" in controlling the practice of law and the protection of the public, the Court rightfully looked into the potential problems of the future under this plan or any similar device to circumvent the desired individual attorney-client relationship. Because the Illinois Supreme Court is concerned with what might happen in the future, the union charges it with unnecessary clairvoyance, and condemns such reasoning. Petitioner ignores, however, the responsibility of the Illinois Court over the legal profession and its duty to protect the public, incidental thereto. It is no answer to say that this plan or any one like it should be continued because the Court has the right to correct individual abuses as they are brought to its attention. Consider if you will, what this means, and its effect upon the individual. The salaried lawyer handles a claim for an individual mineworker member, and, because he has not fully prepared his case, the mineworker receives an award considerably less than the maximum he was entitled to or could have received. Consider further that this situation, because of the salaried lawyer relationship, does not come to the attention of the Bar until the appeal time has been exhausted. Certainly, the Bar and the Court are interested in this case and probably will hold hearings as to the lawyer's conduct, to deter-

mine whether this was incompetence, or of such a character to deserve suspension or disbarment. What good is this control element to the individual whose claim has not been handled properly? Obviously, he is left without a remedy unless it is against the lawyer for mal-practice. The Supreme Court of every state, not only Illinois, must consider many matters prospectively in order to fulfill its rule making function. It is because of its profound duty that Illinois concerned itself with (1) the preservation of the integrity of the attorney-client relationship, (2) determined that Federal Constitutional provisions of free expression and association are not infringed by that court's control of professional conduct and its protection of the public, and (3) the prevention of substantial commercialization of the law profession.

We do not find any constitutional infringement of the rights of the Illinois mineworkers in the action taken by the Courts of Illinois to regulate and control the practice of law within its border. The State of Illinois has a "compelling state interest" in controlling the standards of professional conduct, **NAACP v. Button,** 371 U. S. 415 at 438. The Illinois Supreme Court is not attempting to regulate conduct involving the application of a Federal law, such as the Safety Appliance Act, the Federal Employer's Liability Act, or the practice before the United States Patent Office, **Sperry v. State of Florida,** 373 U. S. 379, but the Illinois decision merely limited its curtailment of the Union's conduct to state protected rights only.

III.

A Discussion of Group Legal Services Is Not Pertinent to the Issues in This Case.

The problem presented by the facts of this case were of such a nature that any discussion of group legal services as an answer to the issues raised herein would

be improper. The extent of the legal services rendered by the salaried lawyer employed by United Mine Workers of America, District 12, made it imperative that the Illinois Supreme Court reach the decision it rendered. It was a purely local problem within Illinois, involving a union and a lawyer, and the proper application of the prohibitions contained in the Canons of Ethics. It was a proper exercise of the Court's power to control the practice of law.

We have treated this improper insertion of consideration of group legal services in our Objections to requests by others to file as Amicus Curiae. The position we asserted therein is the position of the Illinois State Bar Association and, by virtue of its many decisions on the subject of unauthorized practice, is the position of the Illinois Supreme Court.

CONCLUSION.

For the foregoing reasons, the Illinois State Bar Association and the individual members of its Committee on Unauthorized Practice of Law submit that the decision of the Illinois Supreme Court was correct, and that this Court should affirm that decision.

Respectfully submitted,

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Counsel for Respondents.

APPENDIX.

APPENDIX A.

Workmen's Compensation Act.

§ 138.16 Rules and Orders—Depositions—Subpoenas—Hospital Records—Court Reporter—Fees and Charges.

The Commission shall make and publish rules and orders for carrying out the duties imposed upon it by law, which rules and orders shall be deemed prima facie reasonable and valid.

* * * * * * *

The Commission shall have the power to determine the reasonableness and fix the amount of any fee of compensation charged by any person, including attorneys, physicians, surgeons and hospitals, for any service performed in connection with this Act, or for which payment is to be made under this Act or rendered in securing any right under this Act. 1951, July 9, Laws 1951, p. 1060, § 16, as amended 1957, July 11, Laws 1957, p. 2610, § 1; 1959, July 21, Laws 1959, p. 1733, § 1.

138.19 Judicial Review—Certiorari—Scire Facias—Certification of Record by Commission—Cost of Record.

(1) Except in cases of claims against the State of Illinois, in which case the decision of the Commission shall not be subject to judicial review, the Circuit Court of the county where any of the parties defendant may be found, or if none of the parties defendant can be found in this State then the Circuit Court of the county where the accident occurred, shall by writ of certiorari to the Commission have power to review all questions of law and fact presented by such record.

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Bond—Determination on Certiorari—Review by Supreme Court—Supersedeas and Stay—Majority Rule.

(2)

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Judgments and orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon the filing of a Notice of Appeal. Such Notice of Appeal shall be filed with the Clerk of the Circuit Court within 30 days after the entry of the order of that Court. The time herein provided for the filing of the Notice of Appeal shall be jurisdictional and shall not be subject to any extension. Except as herein provided, the appeal shall be subject to statute or rules of the Supreme Court.

* * * * * * * *

Sec. 138.19 Appointment of examining physician—Fees of attorneys and physicians.

(c) The Commission may appoint, at its own expense, a duly qualified, impartial physician to examine the injured employee and report to the Commission. The fee for this service shall not exceed $5 and traveling expenses, but the Commission may allow additional reasonable amounts in extraordinary cases.

The fees and payment thereof of all attorneys and physicians for services authorized by the Commission under this Act, shall, upon request of either the employer or the employee or the beneficiary affected, be subject to the review and decision of the Commission.

* * * * * * * *

29 USCA, § 141. Short title; Congressional declaration of purpose and policy.

(a) This chapter may be cited as the "Labor Management Relations Act, 1947."

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce. June 23, 1947, c. 120, § 1, 61 Stat. 136.

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APPENDIX B.

Exhibit A.

Report to Attorney on Accidents, Legal Department, U. M. W. of A., District No. 12.

Read this carefully and when filled out mail to Legal Department, District 12, U. M. W. of A., 601 United Mine Workers Building, Springfield, Illinois.

1. See that notice of every accident and claim for compensation is made upon the company within 30 days. (In hernia cases notice and claim must be made in 15 days.)

2. Compensation is not due in injury cases until three weeks after the injury. Do not make this report until a reasonable time has elapsed after compensation is due, and then only after demand on the company has been made, and either no compensation is paid, or not a sufficient amount.

3. The purpose of making reports in injury cases is to bring to the attorney's attention cases where compensation is not paid when due, or where compensation is not adequate in amount, or where compensation payments are discontinued before it is proper so to do; or where compensation payments have been discontinued and there yet remains compensation due for: 1—Temporary total, being time of inability to perform any work; 2—Medical, surgical and hospital services; 3—Partial incapacity, being the period when only partial earnings are possible; 4—Loss of a member, such as finger, toe, leg, hand, etc.; 5—Permanent disfigurement to head, hands or face; 6—Partial loss of the use of finger, hand, arm, foot or leg; and, 7—Complete permanent disability.

4. Report all death cases not later than ten days thereafter.

5. It is useless to send these reports unless all questions are fully answered.

(Please Print)

Date of Report.....

1. Full name of injured or deceased.....

2. Address.....Telephone No.....
Local Union No.....

3. Number of children under eighteen at time of accident .....

4. Date of injury.....

5. Correct Name and Address of Company operating mine, number and nickname of mine, if any.....
.....

6. Nature of work person engaged in at time of accident; describe and give in detail injury or injuries sustained, whether arm, leg, or eye (right or left). Give any disfigurement to head, hands, or face. State if there is any partial incapacity for work.....
.....
.....
.....
.....
.....

7. Did Company furnish all medical and hospital attention? .....

8. When did injured return to work, or when will he be able to return to work.....
.....

9. Regular work of injured.....

10. Has any compensation been paid? If so, how much and at what rate per week.....
.....

11. Date of service on the Company of notice of accident? .....

12. If no notice was given, did accident come to knowledge of some officer of the Company and to whom and when? .....
.....

13. Day or night shift? .....

14. Describe any previous injury? .....

15. When? .....

16. Where? .....

17. What? .....

18. Any compensation collected? .....

Date of this report .....

Reported by .....

Signed .....

Address .....

Local Union No. .....

Exhibit B.

Letterhead of United Mine Workers of America.

September 23, 1959

To Local Union Officers and Members
Board Member District 4
District 12, U. M. W. of A.

Dear Sirs and Brothers:

It has been brought to our attention that some of our members are not properly apprised as to the period allowed for filing claims under the Workmen's Compen-

sation Law. Therefore, we would like to call to your attention that the Industrial Commission has certain requirements that must be met before a claim can be properly processed before it.

1. The injured employee must make a report to the company on all hernia cases within 15 days of the date of the accident. Otherwise, the claim is barred.

2. All other accidents must be reported promptly to the company, but not to exceed 45 days from the date of the accident. Otherwise, the claim is barred.

3. We must receive your Report to Attorney on Accidents in time to file your claim with the Industrial Commission within one year of the date of the accident, or one year from the date of the last compensation check. Otherwise, the claim is barred.

However, we insist upon Accident Reports being filed with us promptly when the man is released from medical care, or, in any event, he cannot extend his filing time by continuing under medical care. A good rule to follow is to file all claims with us promptly. We are enclosing some Accident Report forms, and ask that you write us when you need a further supply.

We hope the Local Union Officials will designate someone at each Local to be responsible for seeing that our members' rights are protected under the Law. Let us do everything in our power not to allow any of our members to have their claims barred for failure to file accident reports within the proper time.

With kind personal regards,

Very truly yours,

M. J. Hanagan,
Attorney.

Exhibit C.

Letterhead of United Mine Workers of America.

September 26, 1963

To the Officers and Members,
Local Unions in District 12
United Mine Workers of America

Dear Sirs and Brothers:

We are pleased to notify our membership that Mr. Stuart Traynor, Attorney at Law, will have charge of the Workmen's Compensation cases for members of District 12, United Mine Workers of America, effective October 1, 1963. He fills the vacancy created by the death of our former attorney, Mr. M. J. Hanagan.

Mr. Traynor will service our Legal Department through offices at the District Headquarters, Room 601, United Mine Workers' Building in Springfield, and our office in the Elks' Building, West Frankfort.

Accident reports should be mailed to him at the office in your respective area. Compensation cases will be filed and handled through the Industrial Commission of Illinois as in the past.

Very truly yours,

Joe Shannon,
Acting President.

IS:RJ

APPENDIX C.

American Bar Association

Standing Committee on Professional Ethics

Re: Informal Opinion No. 469 12/26/61

Employer, Association or Union Agreeing to Pay Legal Expenses of Employee or Member

You have forwarded to us a letter from Mr. (name) in which he inquires if there is anything unethical in any of the following situations:

(1) An employer agrees to pay the legal expenses of any employee who retains an attorney (a) to perform any work of a civil nature (including, but not being limited to, writing wills, defending negligence actions, etc.); (b) to defend the employee on any criminal charge except a felony.

(2) An association agrees to do the same for any member of the association.

(3) A Labor Union agrees to do the same for any Union member.

From an ethical standpoint, all of the above situations appear to be similar, and they will therefore be dealt with together rather than singly.

We gather from your reference to "the legal expenses of any employee who retains an attorney" that in each case the attorney is selected and employed by the employee or member, and has no responsibility to the employer, association or union, which merely pays his fee and expenses.

Canon 35 says:

> "A lawyer's relation to his client should be personal, and the responsibility should be direct to the client."

The mere fact that the client is to be reimbursed for his legal expenses does not destroy this relationship, so long as that is all that is involved. On the other hand where the lawyer is selected and employed as well as paid by the employer or association to represent its employees or members, the employment may well be unethical. See Opinions 3, 31, 35, 41, 56, 98 and Informal Opinions 317 and 319.

We therefore hold that there is nothing unethical in the situations which you describe so long as the participation of the employer, association or union is confined to payment of or reimbursement for legal expenses only.

APPENDIX D.

Formal Opinion 282

(May 27, 1950)

An attorney may accept employment from an insurance company to represent the company's insureds within the limits of the policy without the request or approval of the insured.

An attorney who is employed by an insurance company to prosecute the company's subrogation claim against a third party may simultaneously prosecute the insured's claim for the amount not recoverable under his insurance if the attorney is retained and compensated directly by the insured.

An attorney may defend for a fee a person sued in a "public liability and property damage" action brought by a third party when at the same time he represents the "collision" insurance company and the insured in a cross-action against such third party.

Canons Interpreted: Professional Ethics 6, 27, 34, 35, 47

A lawyer, employed and compensated by an automobile insurance company, which holds a standard contract of insurance with an insured, may with propriety:

A. Defend the insured in an action brought by a third party without making any charge to the insured;

B. Prosecute an action for the insured against a third party, upon a fee basis, along with a subrogation action by the insurance company;

C. Defend for a fee a person sued in a "Public Liability and Property Damage" action brought by a third party when at the same time he represents

the "Collision" insurance company and the insured in a cross-action against such third party.

The opinion of the Committee was stated by Mr. Brucker, Messrs. Drinker, Jackson, Jones, F. M. Miller, S. Miller, Jr. and White concurring.

The Grievance Committee of The Toledo Bar Association has presented several questions to this Committee with respect to representation of an insured by a lawyer employed and compensated by an insurance company. These questions are as follows:

1. May an attorney, employed by an insurance company exclusively, on a salary basis, prosecute subrogation claims for both the portion recoverable by the insurance company and the portion recoverable by the assured under a deductible policy?

2. May said attorney charge a fee to the assured based upon the assured's pro rata share of the amount of recovery?

3. May said attorney defend the assured in action brought by a third party against the assured?

4. May said attorney charge a fee for defending the assured in the action referred to in No. 3? The attorney referred to in this question is employed by the insurance company which carried the *collision* coverage on the assured's car.

5. May an attorney, employed by an insurance company exclusively, upon a salary basis, defend law suits against assureds on behalf of the insurance company, within the limits of the policy, without making any charge to the assured?

6. May an insurance company employ an attorney to defend law suits against assureds, within the limits of the policy, without the request or approval of the assured?

We shall first consider questions 5 and 6 together because of the relevancy of the answers to the other questions presented. The inquirer adds the following comment:

> It is the writer's notion that questions 5 and 6 are intended to raise the issue as to whether an insured should be permitted to retain his own counsel, who would be reimbursed by the insurance company, and also whether or not the insurance company in utilizing the services of its own attorney-employee or in employing independent counsel is, in effect, practicing law.

Canon 35 of the Canons of Professional Ethics provides:

> The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications and individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. . . .

Canon 47, which is complementary to *Canon 35*, provides:

> No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.

Any answer to these interrogatories must of course consider the relationship of the parties created by the contract of insurance.

The standard policy of automobile insurance requires the following duties from the insurance company:

(a) That it shall defend any suit against the insured alleging injury and claiming damages;

(b) That it shall pay any judgment rendered against the insured up to the applicable limitation of liability under the policy.

(c) That it shall pay all expenses incurred by it and all taxed costs and interest accrued after entry of judgment.

The standard policy of automobile insurance requires the following duties from the insured:

(1) To give the insurance company prompt notice of the accident, claim or suit.

(2) To give assistance and cooperation in opposing such claim or suit.

(3) To subrogate the insurance company for any amount paid by it to the insured.

From an analysis of their respective undertakings it is evident at the outset that a community of interest exists between the company and the insured growing out of the contract of insurance with respect to any action brought by a third person against the insured within the policy limitations. The company and the insured are virtually one in their common interest. The requirement that the insurance company shall defend any such action contemplates that the company, because of its contractual liability and community of interest, shall take charge of the incidents of such defense including the supervising of the litigation. Whenever the insured is served with the court process as a defendant, the contract of insurance expressly requires him to forward such process to the company so that the company may provide the means of defense. It is elemental that this includes retaining and compensating a lawyer at the company's expense.

Under certain circumstances a person may by contract clothe another with power to retain a lawyer to conduct a defense. Especially may this be done when, as here, the power is coupled with an interest resulting from covenants of insurance. Under these circumstances the lawyer selected by the company to conduct the defense cannot be said to be "exploited" by the company under *Canon 35*. Nor can it be said that the lawyer is lending his services to the "unauthorized practice of law" under *Canon 47*. No profit inures to the company through the lawyer's employment and it is an incident of the main contract of insurance. The essential point of ethics involved is that the lawyer so employed shall represent the insured as his client with undivided fidelity as required by *Canon 6*.

"Consent and approval" to represent the insured are clearly implied when the insured complies with his reciprocal duty under the insurance contract by forwarding the court process to the insurance company. If the insured does not desire to avail himself of the company's obligation to defend the suit including counsel, together with payment of any judgment and costs, he is at complete liberty to renounce his rights under the insurance contract and employ independent counsel at his own expense.

For the foregoing reasons our answers to the 5th and 6th questions are in the affirmative with the qualifications stated.

The 1st and 2nd questions may be considered together. A lawyer employed by an insurance company may, of course, prosecute the company's subrogation claim against a third party, recoverable by the insurance company. Nor is there any conflict of interest within the meaning of *Canon 6* in the lawyer's prosecuting simultaneousy the claim recoverable by the insured under a deductible policy —providing the lawyer does so on a fee basis paid by

the insured direct to the lawyer and not to the insurance company for such services. *Canon 34* prohibits division of fees with any lay organization and the lawyer's arrangement with the client must observe this requirement. Furthermore, under *Canon 27* the lawyer representing the insurance company in a subrogation claim is barred from soliciting or even suggesting that he might represent the insured upon his claim against a third party. He may accept such retainer only if voluntarily proffered by the insured. Hence the answer to the 1st and 2nd questions is in the affirmative with the qualifications stated.

The 3rd and 4th questions are explained by the following comment from the inquirer:

> With reference to questions 3 and 4, we have in mind the situation where an action is brought against the assured to recover damages, either to person or property, and the assured then files a cross petition for damages to his automobile in which the insurance company, which carried the collision coverage, joins as co-cross petitioner and sets up its subrogation claim. You can see that, under these circumstances, the attorney, as a salary-employee of the insurance company, is not only representing the insurance company and the insured in their claims for damages against the third party, but would also be defending the insured in the action of the third party against the insured. Although the insurance policy involved was only collision coverage and not public liability and property damage coverage.

Summarized, the questions are as follows: May a lawyer employed and compensated by an insurance company which carries only collision insurance, defend the insured in a "public-liability-and-property-damage" action brought by a third party against him, and at the same time act for the insured and the *collision* insurance company in a joint cross-petition against such third party?

There is nothing basically unethical in a lawyer, who is employed and compensated by a *collision* insurance company, defending a person in an action based upon damage to person and property brought by a third party. It is conceivable that there might be some conflict of interest between the "collision" insurance company and the insured, who is the same person who is made defendant in the "person-and-property-damage" action. Under *Canon 6* if such a conflict should arise, the lawyer could not represent both without "express consent of all concerned given after a full disclosure of the facts." However, if such consent were given there is no ethical obstacle to the lawyer representing both parties. Under *Canon 27* the lawyer for the "collision" insurance company is forbidden to solicit or even suggest to the insured that he might be retained to defend the "person-and-property-damage" action. However, if voluntarily proffered by the defendant in such action he may accept the retainer and proceed with the defense of the action brought by the third party, and at the same time may act for the insured and the collision insurance company in a joint cross-petition against such third party. Hence the answer to questions 3 and 4 is in the affirmative with the qualifications stated.